

LOS ANGELES BAR BULLETIN

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Los Angeles BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association, 241 East Fourth Street, Los Angeles 13, California. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price \$1.80 a Year; 15c a Copy.

VOL. 30

MARCH, 1955

No. 6

The President's Page

By Kenneth N. Chantry



Kenneth N. Chantry

It would be discourteous for me to presume that the new administration of your association assumes its responsibilities with any greater supply of benevolent ideas or desires for achievement than any one of the preceding administrations. It shall make mistakes and suffer blunders. Fortunately, the law of compensatory error will, I pray, afford sufficient protection to insure it a fair degree of accuracy.

If this administration is able to approximate the temper of leadership and record of achievement for the association that was maintained under the administration of Harold Black, its work will have been well done.

Those of us who have had the good fortune to serve with Harold have seen his quiet display of force and driving power. He presided at our monthly meetings and represented us at official gatherings with dignity, reserve and charm. Rarely does one encounter a mind with such even temperament, reach of knowledge, and grace of perception. It is the consensus of the Board of Trustees that Harold Black has been an outstanding President.

We proclaim his liberation and send him forth with pride, well qualified to join that illustrious list of Past Presidents.

This administration shall also sorely miss the sage advice and congenial companionship of Lon A. Brooks, David T. Sweet, Ira M. Price, Rufus Bailey, Gordon L. Files, J. W. Mullin, and William Howard Nicholas, our retiring Trustees. Each and all of these men have performed extraordinary services for the association. Their work standing alone is better praise than any words I can write.

* * *

Effective January 1, 1955, a new ruling by the Treasury Department permits the purchase by "personal trust estates" of U. S. Series E and H Savings Bonds, on the same terms as those governing investments by individuals.

Sales of Series E and H Savings Bonds had previously been limited to individuals, either as owners, co-owners or beneficiaries. The privilege of bond ownership has now been extended to trust funds created by an individual for the benefit of himself or another individual.

The annual purchase limit of \$20,000.00 in maturity value of each Series which applies to individual owners will also apply to a single trust estate, regardless of the number of beneficiaries. Under this provision, holdings can total \$40,000.00 if the limit is purchased of Series E and the current income Series H bond.

* * *

"Point of Law," a five-minute radio program pointing up legal situations requiring legal counselling, is now on the air six days a week, Monday through Saturday, on KFI at 4:55 P.M.

"Point of Law" scripts are screened by a committee appointed by the Board of Trustees of your association. Each program bears a "Seal of Approval" in the announcer's statement that "This digest version of a true case has been authenticated by a committee of attorneys representing the Los Angeles Bar Association." The scripts deal with such problems as improperly drawn Wills, individual executors, joint tenancies, checks, deposits, torts and contracts.

"Point of Law" indicates that the law is a field requiring specialists—the legal profession—and as such is expected to be an excellent public relations medium of the Los Angeles Bar Association.

It would be appreciated if you will feel free to write us concerning any suggestions or criticisms that you may have concerning this program.

Communism, Professional Freedom and the Conduct of the Bar: a Symposium

(Introductory Note: Unusual interest has been expressed by members of the Bar in the proposed changes in the rules of professional conduct concerning disbarment or suspension of attorneys for adhering to Communism, disrespectful conduct at legislative and administrative hearings, or exercise of the privilege against self-incrimination. A number of earnest statements on both sides of the controversy were submitted to the Board of Governors of the State Bar at a special hearing held in Los Angeles on February 16th to consider the changes recommended [State Bar Journal, Volume 29, Page 349] by the Board's Committee on Rules of Professional Conduct. Presented below are four statements made at that hearing by members of the Southern California Bar.)

IN SUPPORT OF PROPOSED CHANGES IN RULES OF PROFESSIONAL CONDUCT STATEMENT

By HOMER D. CROTTY*

Mr. President and Members of the Board of Governors of the State Bar:

Your Board referred to our committee the interesting but thorny question as to effective methods of handling the complaints against lawyers who may be engaged in subversive activities, or who fail to show due respect to legislative committees. A prior committee recommended that action be taken by the Board of Governors to correct these abuses. We were instructed to complete that assignment. In our report to you dated June 1, 1954, we recommended the enactment into law of the new provisions set out as exhibits to our report.

The amendment of Section 6106.1 of the Business and Professions Code relates particularly to those lawyers who may be engaged in subversive activities. It is modeled upon two sections of the existing law relating to state employees and school employees.

At the outset, let me state that the Committee has not recommended either the repeal or an amendment to the Fifth Amendment or comparable provision of our California law. We consider the invocation of the Fifth Amendment an important privilege

*Chairman of Committee on Rules of Professional Conduct for State Bar (which made the recommendations under consideration); Past President of the State Bar, member of the firm of Gibson, Dunn & Crutcher, Los Angeles.

which should be retained for every individual. We do, however, feel that for an attorney to claim the Fifth Amendment in connection with questions on subversive activities is inconsistent with his privilege to practice law. If he wishes to claim the Fifth Amendment, that is his privilege. At that point, however, the State Bar should examine him to see whether his license to practice should be revoked and whether he should be continued as an officer of the court. The attorney's privilege to practice law is not unlimited. To use the language of Mr. Justice Cardozo (*In re Rouss* [N.Y. 1917] 116 N.E. 782, 783):

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. . . . Whenever the condition is broken the privilege is lost. To refuse

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Issue Editor—Frederick G. Dutton

admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of crime."

In our report we mentioned the criticism of persons who invoked the Fifth Amendment which was made by President Dickey of Dartmouth University. As President Dickey put it,

"A man who exercises this privilege (under the Fifth Amendment) either genuinely believes his words may incriminate him or he is using the privilege improperly. On the first assumption he, by his own action, avows the existence of what can reasonably be regarded as disqualification for service in a position of respect and responsibility; on the other hand, if he has invoked the privilege without truly believing that he needed protection, he has acted falsely toward his Government. Either way you take it, it seems to me we must say as a matter of general policy that such a person has compromised his fitness to perform the responsibilities of higher education, and unless there is clear proof of peculiar circumstances in the particular instance which would make application of this policy unjust and unwise, the normal consequences of such disability must ensue."

President Dickey, far from being a layman, is a graduate of the Harvard Law School, class of 1932, and is a member of the Massachusetts bar. He has had a distinguished career in public service. His remarks, we believe, should be treated with great respect.

To give a concrete illustration of what we have in mind, let us suppose that we take the case of the Chief of Staff of the United States Military Forces. Suppose that vitally important person were asked the question, "Have you ever been a member of the Communist Party?" and in answer he invoked the Fifth Amendment. What a chill there would be in the hearts of the American people! Doubtless he would be entitled to exercise the privilege of the Fifth Amendment. But no one but a Communist would believe that the Chief of Staff should continue to head the American Military Forces. In other words, there is a personal privilege which he can exercise, but an office which he must relinquish.

Similarly, our state legislatures and our national government have recognized that those who are security risks can maintain their personal privileges of claiming the Fifth Amendment, but they must give up the offices which they hold. In California the school teacher, as well as the policeman, must also give up his office if he claims the Fifth Amendment on a loyalty question. Surely a lawyer is not less important in the scheme of things. He is an officer of the court.

If a lawyer in a disciplinary proceeding for embezzlement of his client's funds claims the Fifth Amendment when asked to account for them, we believe his value as a lawyer is decidedly impaired. He is no longer entitled to public confidence. How can we possibly consider him a loyal trustee? If he claims the Fifth Amendment, let him claim it; but also let him be examined by the administrative committees of the State Bar as to why he should not relinquish his license to practice law and his position as an officer of the court. Although these obligations are implied in the lawyer's oath of admission, we believe these obligations should be clearly spelled out so that all will have notice of them. Public confidence must be maintained securely and with vigilance.

There has been some suggestion that the existing law, the Smith Act and the Criminal Syndicalism Law may be sufficient to handle this matter. We believe that position is unsound. Taking the case of the Chief of Staff, would anybody contend that he must first be convicted of violation of the Smith Act before he could be relieved of his position as Chief of Staff of the American Military Forces? The answer is emphatically "No." Lawyers also are in this same position.

As Justice Cardozo said (*In re Appeal of Karlin* [1928] 162 N.E. 487, 493):

"If the house is to be cleaned it is for those who occupy and govern it rather than for strangers to do the noisome work."

I have here a letter from the distinguished president of the American Bar Association, Mr. Lloyd Wright, strongly commanding the Committee's report, and I would like to file it with you. As President Wright declares, the bar must be above suspicion in its loyalty to our country and in its loyalty to clients.

The proposed laws do not provide for automatic disbarment.

Actually, under the State Bar Act there is no provision for automatic disbarment except in connection with the conviction of a crime involving moral turpitude. The lawyer would be entitled to a hearing before the administrative committees of the State Bar and later before the members of the Board of Governors. If he were dissatisfied with the result, he has the right to appeal to the Supreme Court of this state. If there should arise cases in which there is doubt as to whether the lawyer was justified or not in claiming his privilege under the Fifth Amendment, we believe that he can rely with confidence upon the administrative procedures of the State Bar to bring about a just result.

As all members of the Board of Governors know, every consideration of justice is given to the lawyer to be sure that he will not be deprived of his license to practice law, even temporarily, unless there are sound reasons for it. The Board of Governors is not a Star Chamber court. Not only the Board of Governors but the Supreme Court of this state have leaned over backward to be sure that no injustice is done. Not every breach of the rules has called for the imposition of discipline.

A further reason for the enactment of Section 6106.1 has occurred to members of our committee due to certain recent cases. It is apparently now the position of the Supreme Court of this state that where a person has refused to answer whether or not he is a Communist that such person shall not be admitted to practice law (*Brooks v. State Bar*, 43 Adv. Cal. 17, Oct. 12, 1954, Minute Order, p. 2). Is there any justification if such a person were already a lawyer, he should continue as such, without more?

To come to another phase of the matter, that is, the respect due to courts of justice and to the committees of the Congress of the United States and the Legislature of this State, etc.—we had quoted in our report from the transcripts of the hearing of the Committee on Un-American Activities in 1952 here in Los Angeles. It has been suggested that if the conduct was so bad as our committee reported, why should not the Committee on Un-American Activities have held these lawyers in contempt of the Committee? We are satisfied, under the existing cases, that witnesses before Congressional Committees may insult Congressional Committees with impunity. Such conduct in a lawyer, however, cannot be condoned. We do not, as has been alleged by some members of the bar, expect Chesterfieldian manners on the part of witnesses before Congress-

sional Committees. We concede that there are many cases in which the circumstances under which witnesses are examined are most trying and even brutally unfair. We do insist that the lawyer witness must be a gentleman and behave as such. We advised you that we do not consider that under the existing sections of our State Bar Act that the State Bar had any power to proceed against lawyers who engaged in rancorous and insulting conduct before legislative committees. Hence we recommended these amendments. Lawyers now will have notice of what is expected of them.

We cannot emphasize too strongly that we consider that the purposes of our committee are to carry forward the philosophy contained in the preamble to the Canons of Professional Ethics of the American Bar Association: "*The future of the Republic to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.*"

Appreciation of the Los Angeles Bar Association is extended to the members of the Federal Courts Criminal Indigent Defense Committee who are contributing their services and time on behalf of the Association and the Bar in general. Those who volunteered to serve during the month of February, 1955, are as follows:

MORRIS ARONOFF	WENDELL MACKAY
MANUEL AVILA	MURRAY M. MCCOLLOCK
ARTHUR C. BAKER	JAMES R. ROSS
GEORGE G. BAUMEN	LEOPOLDO G. SANCHEZ
RICHARD C. DYER	BERNARD SILVER
JOHN HALL	LILLIAN STEVENS STEGMAN
ROY W. KURRASCH	JOSEPH L. VENTRESS
RONALD B. LABOWE	ERNEST G. WILLIAMS

IN OPPOSITION TO PROPOSED CHANGES IN RULES OF PROFESSIONAL CONDUCT

By WALTER L. NOSSAMAN*

January 25, 1955

DeWitt A. Higgs, Esq.
President, The State Bar of California
625 Broadway
San Diego 1, California

Dear Mr. President:

I am responding to your request (November-December Journal, p. 417) for an expression from members of the bar regarding the report of the Committee on Rules of Professional Conduct (Journal, Vol. 29, pp. 349-363). The grounds of my dissent from the views of the Committee, composed of lawyers whom I respect and admire, will be stated as briefly as possible.

I shall limit my comments to §6106.1(2)(d) (refusal to answer questions of Congressional and other committees), §6106.2 (refusal to answer questions in disciplinary proceedings), and §6068 (duty of respect to Congressional and other committees).

1. §6106.1(2)(d) (refusal to answer questions of Congressional or other committees). Misled by the supposed parallel between this case and that of the bank teller who refuses to answer questions about the funds missing from his till, I at one time considered this kind of legislation at least unobjectionable, perhaps desirable. Perhaps I was wrong even in the bank teller case. But regardless of that, further study has convinced me that the two cases have little in common, and that special considerations apply where opinions or beliefs, not the occurrence or non-occurrence of one simple event, are concerned. The fact is that claiming the constitutional privilege against self-incrimination (or refusal to yield the privilege, which is the same thing) is not necessarily an admission of guilt, even in cases far less involved in the field of opinion and

*Former President of the Los Angeles Bar and member of the firm of Brady, Nossaman & Poulston, Los Angeles.

belief than we are concerned with here.¹ This principle has been applied in at least three cases of disciplinary proceedings against attorneys.²

A witness who knows (or thinks he does, which is as far as any human knowledge goes) that he is innocent of any crime may well hesitate to give answers which may lead to criminal prosecution, with consequent worry, expense and (in the case of lawyers particularly) impairment of professional standing, regardless of result.³ And no one, and particularly no lawyer, I hope, is sufficiently naive to believe that justice operates with mechanical infallibility, and that the innocent *always* go free.

The witness confronted with such a dilemma, in determining how far he shall go in answering questions, needs to consider the delicate problem of waiver of the privilege.⁴ Answering the apparently innocent preliminary question may have the unintended result of stepping out from under the protection of the constitutional safeguard. It will not do to say that this is a good thing—that by the inadvertence of the witness another criminal has been exposed. The privilege, seemingly going back at least as far as 1589,⁵ was firmly established in our juridical system by the decision of the House of Lords in John Lilburn's case in 1645.⁶ Adopted by several of the original thirteen states prior to the adoption of the Constitution,⁷ it became a part of the law of the land through the Fifth Amendment. I have some difficulty with the reasoning by which it is determined that a privilege of such respectable antiquity, protected by the Constitution of the United States, designed to protect

¹Burdick v. United States, 236 U.S. 79, 94, 59 L.Ed. 476 (1915); Hoffman v. United States, 341 U.S. 479, 486, 95 L.Ed. 1118 (1951); Maffie v. United States, 209 F.2d 225, 227-228 (C.A. 1, 1954); United States v. Spector, 193 F.2d 1002, 1006-1007 (C.A. 9, 1952); Aiuppa v. United States, 201 F.2d 287, 289 ff. (C.A. 6, 1952).

²Matter of Grae, 282 N.Y. 428, 434, 26 N.E.2d 963, 966 (1940); In Re Ellis, 282 N.Y. 435, 26 N.E.2d 967 (1940); In Re Holland, 377 Ill. 346, 36 N.E.2d 543 (1941).

³The privilege embraces answers which would furnish a link in the chain of evidence needed by the prosecution. Hoffman, note 1 above, p.486 of 341 U.S.; Maffie, note 1, Grae, Holland, note 2.

The painful dilemma a witness before even a Senate Committee may find himself in is stated in striking manner in Aiuppa, note 1 above, 201 F.2d 287, 300.

⁴Rogers v. United States, 340 U.S. 367, 95 L.Ed. 344 (1951).

⁵Cullier v. Cullier, Cro. Eliz. 201, 78 Eng.Rep. 457 (K.B.). Actually its origin is obscure. See E. M. Morgan, *The Privilege Against Self-Incrimination*, 34 Minn.L.R. 1 (1949).

⁶Lilburn's Trial, 3 How.St.Tr. 1368.

⁷See Twining v. New Jersey, 211 U.S. 78, 91, 53 L.Ed. 97 (1908). See Wigmore on Evidence, Vol. 8, §2250, on history of the privilege.

the innocent, becomes by the very fact of its exercise, evidence (conclusive for this purpose) of guilt, a confession dispensing with the necessity of proof. I suggest that such a reversal of the judicial order—conviction preceding, or at latest concurrent with accusation—has no place in an American system of jurisprudence.

Again, the Committee's report apparently makes the Congressional or other committee the final arbiter of its own authority, and judge of the relevance of its inquiries.⁸ The attorney, under penalty of suspension or disbarment must reveal all information other than that derived from privileged communications, concerning the matters mentioned in §6106.1(2)(d)(iii), even though that information may have been gathered in preparing his client's case, and be necessary for the proper representation of his client.

Of course, a time may come when the refusal of a lawyer, as of any one else, to testify in his own behalf may furnish an evidence of guilt which the judge may comment on, or the jury may consider. But that is after a trial in a court, when proof of the substantive crime has been submitted. The Committee's report would reverse this process, dispensing with the necessity of proof of guilt, in a court or elsewhere.

2. §6106.2 (refusal to answer questions in disciplinary proceedings). The objections to this proposed new section are sufficiently stated in what has been said.

3. §6068 (duty of respect to Congressional and other committees). It would be nice if the conduct of a lawyer could always be that of a perfect gentleman or lady, as the case may be. But I doubt if this desirable social end can be achieved by legislation. The Committee, to support its recommendation, quotes at length (Journal, Vol. 29, pp. 354-356) from the testimony of a lawyer before a Congressional Committee in 1952, and it must be admitted that the example is pretty terrible. But the question remains, whether it is necessary to put restrictions on seventeen thousand lawyers in order to control the conduct, however outrageous, of one or even twenty. A lawyer's duty to his client, or even to himself, requires him at times to be outspoken. Chesterfieldian courtesy would be

⁸United States v. Rumely, 345 U.S. 41, 97 L.Ed. 770 (1953; contempt conviction for refusal to answer questions set aside, where questions were not relevant to the inquiry).

lost upon, and would be utterly ineffective before, some legislative committees—in fact, recently widely publicized hearings show that a lawyer observing the standards of conduct of a gentleman may be greatly handicapped in dealing with particular members of such committees. The surroundings have little of the comparative serenity of a courtroom, presided over by an experienced and presumably impartial judge. There is apt to be some of the atmosphere, graphically described by a Court of Appeals in a recent case,⁹ which we associate with a species of exhibition. In such an atmosphere, charged with emotion, often with prejudice, even with hatred, is the lawyer required to measure his language with such nicety as to forestall *all* risk of reprisal through the threat of depriving him of his livelihood? The public interest, I suggest, lies in the direction to giving freedom to the lawyer, even with the certainty that that freedom, like all others, is going to be occasionally abused.¹⁰

The Committee's report, if adopted, could constitute an entering wedge to restrictions of far greater import. A predecessor committee (see 28 State Bar Journal 71) wanted to enforce "respect due" not only to legislative bodies, committees, governmental boards and commissions, but to "officers," which presumably would include everybody from President to dogcatcher. We don't want officials, major or minor, to be in a position to say: You must approach me with what I consider the respect due me, or I'll have you up before a State Bar committee. The Committee has wisely refused to go that far. But its recommendations, if adopted, will set a precedent that requires little extension in scope, and none in principle, in order vastly to restrict the bar in the exercise of its traditional functions, indispensable to a free society.

Respectfully submitted,

s/ Walter L. Nossaman

WLN:ah

⁹*Aiuppa*, note 1, 201 F.2d at 300.

¹⁰The Committee's report would extend disciplinary authority to contumacious conduct before the Board of Governors and Administrative Committees of the State Bar. I know of no experience of either that justifies this suggestion. Except that such proceedings are conducted in an orderly manner, the objections stated above apply here also.

**IN SUPPORT OF PROPOSED CHANGES IN RULES
OF PROFESSIONAL CONDUCT STATEMENT****By JAMES C. SHEPPARD*****TO THE BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA.****Sirs:**

On February 9, 1955, I addressed a communication to your Secretary requesting permission to speak in support of the recommendations of the Crotty Committee.

Inasmuch as I have not been advised that this permission has been granted to me, I take this means of expressing my support of the recommendations of that Committee.

No longer can the organized bar ignore the menace of communism. The greater portion of our national budget is spent defensively in opposition to this menace. Our Congress, our State Department, and our Legislature have formally expressed the national and state viewpoint that such menace is a real one. There is a very rigorous and real propaganda effort utilized constantly in this country by adherents of communist propaganda.

Unfortunately, Americans are prone to think that communism is a foreign rather than a domestic menace. This type of myopia pervades the whole American scene. The average American thinks that communism is something which will never enter his nation, his state, or his home community.

The history of the followers of Marx, (See John Reed, "Ten Days That Shook the World") demonstrates that communism first takes the form of propaganda, next the philosophical capture of key people, and finally the capture of key leaders, with the inevitable disruption of government and the consequent take-over by communist functionaries.

The members of the State Bar who are not members of the communist party have nothing whatsoever to fear from the adoption of these recommendations. They are preventive in scope. If communism exists among the bar, a housecleaning is permitted. The theory of the amendments is that he who is a communist, or he who partakes of communism should not be permitted to practice law in California.

It is significant to me that out of the mass of objections which have been levied at these proposals, not one of the criticisms makes a constructive approach designed to prevent the philosophy of com-

*Member of the firm of Sheppard, Mullin, Richter & Balthis, Los Angeles.

munism from entering the ranks of the State Bar. The criticisms are negative in character. There is no element of positivism in any of the approaches. No one denies the truth of subdivisions (a) to (f) of Section 1 of the proposed Section 6106.1. The objections are to the remaining proposals. It seems fundamental that lawyers ought to treat any agency of the government, whether it be a court or legislative committee, with proper respect. The fact that a lawyer appears before a Judge whom he does not personally respect, does not minimize his obligation to show a proper respect for the institution of the courts. The same principle of respect ought to be required in his appearance before any governmental agency.

The remaining provisions of the proposals ought likewise to have the approval of your Board.

Historically, membership in the Bar has been a privilege burdened with conditions. Lawyers are but instrumentalities in agencies created to advance the cause of justice. Historically, lawyers have been subject to censure, suspension, and disbarment for conduct prejudicial to the administration of justice. To say that a lawyer may hide behind a veil of silence when the furtherance of justice requires him to speak, denies the historical obligation of the lawyer. (See Opinion of Mr. Justice Cardozo, in *People v. Karlin*, 248 N. Y. 465.)

The members of the State Bar of California ought to be above any suspicion of the taint of communism. These measures will assist in accomplishing that result, and I therefore urge their adoption.

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IN OPPOSITION TO PROPOSED CHANGES IN RULES OF PROFESSIONAL CONDUCT STATEMENT

By PAUL ZIFFREN*

President Higgs and Members of the Board of Governors: I want to thank you for this opportunity to be heard here today. I deeply hope that out of your careful consideration will come a decision of continuing dedication to the efficacy of reason and free expression.

I was impressed by the eminent members of the Bar who appeared this morning in favor of these proposals, but I was appalled at the number of eminent members of the Bar who called and asked me to appear, but frankly stated that despite their fervent opposition to these proposals, they did not feel comfortable to do so themselves. Such a situation convinced me that although I cannot agree with everything said by other persons who have appeared here in opposition, I must state frankly my own personal position.

I want to make clear at the outset that I speak only for myself. I am frankly here as a matter of conscience, not preference.

I abhor totalitarianism in every form, just as I am sure all of you do, and am equally determined to protect our Democracy, its Traditions and Institutions against the ruthless, cynical Communist conspiracy. Precisely for this reason, the principles of a profession like ours must not be based primarily on what we are against. Rather, we must emphasize what we are for, what we believe and have faith in.

I oppose the recommendations now pending before this Board because of my conviction that the present judicial and legislative contempt powers, together with the laws now on our statute books, are entirely adequate to hold our members within proper bounds. Any attempt to go beyond these limits would create more dangers and lead to more evil than could be justified by any realistic benefits. Frankly, this conclusion results from my belief that the key aspects of the recommendations before this Board would have three improper and unfortunate results:

First, introduce a political test for membership in our profession; second, impose serious political restraints on attorneys appearing in the essentially political rough and tumble of legislative committee

*Member of the firm of Ziffren & Wilkenfeld, Beverly Hills.

hearings; and third, prohibit members of the Bar for all practical purposes from exercising a constitutional right.

These proposals amount to very large steps backward from freedom. They would affect not only that small portion of the Bar which has subjected itself to justifiable criticism. The proposed steps would be far more portentous for the rest of us. They would demonstrate our willingness to retreat from our principles. The strength of our belief in professional and political freedom is not in the areas where it is unchallenged but in that marginal area where it is controverted and must prove itself.

More tangibly, adoption of the proposals would cause an increased conditioning of the Bar toward conformity. And that would have a still further consequence in the less vigorous advocacy that would be available on behalf of non-conformists in every area of the society we serve.

The implications of the proposals are obviously of concern far beyond just the Bar. Our profession has traditionally provided the greater part of public leadership and the defense of the accused and unorthodox no matter what the circumstances. The examples we set in our own house as to political tests and deprivation of constitutional rights must realistically be expected to a great degree to become the general mold. And the standards we would be setting would not be higher; rather professional and political freedom would be lessened, and we would be setting lower standards.

Nor would there be any countervailing gain of comparable significance. Certainly the recommendations would not make the slightest dent in the Communist conspiracy. Adoption of the recommendations would only result in the Bar running the risk of unnecessarily arousing public insecurity and local hysterias with administrative hearings whose outcomes would certainly be highly publicized, with only minimal effect against actual Communists. Full and prompt prosecutions of Communists under our criminal laws is the only way to deal with any genuine substantive danger. Present laws and precedents are ample for the Bar to act with firm and undeniable dispatch against any of its members duly proven to have trespassed beyond this society's bounds.

But on behalf of the over-all community and in our own self-interest, I am compelled to warn against a law which would allow the Bar to initiate and exercise, purely on its own, punitive powers concerning primarily political matters. Further, it would seem that

if ever there were a context for the free expression and competition of ideas—stated of course, according to proper procedures, that context is the forums wherein attorneys practice their calling, and can answer and cross examine and expose falsehoods and duplicities, whether Communist-conceived or otherwise. If we of the Bar are unwilling to try, and trust, our faith in freedom even in the arenas of the courts and legislative committees and State Bar, then the substance of our faith is fading fast; and there will soon be left only a hollow slogan for us.

The only other apparent justification for the proposals before us would seem to be to help preserve the dignity and proper processes of our courts, legislative committees and administrative agencies. But I submit that those institutions have ample means for protecting themselves. In fact, they themselves must maintain the vigor and judgment to determine what is proper conduct at their hearings, and not fall back on the gratuitous intervention of the State Bar through disciplinary proceedings. But more important than that, I believe that sufficient orderliness and respect for our public institutions are assured. We should not seek to purchase added dignity and decorum—if, indeed, such can be purchased—at the price of less professional and political freedom.

Actually nothing could be more damaging to the respect and specific purposes of our organization than the enactment of the three recommendations before us. The wording of the first recommendations for example, runs broad and deep—is the State Bar now to plunge in and attempt to define where Communism leaves off and other doctrines of change begin? This is not an abstract question but a very live, highly political issue, as senatorial charges and counter-charges with which we are all familiar readily demonstrate.

Similar political involvement would confront the Bar as a consequence of the second recommendation. There are some appearances by counsel before legislative committees that are easy to condemn. But is this organization willing to undertake to say there have never been inexcusable abuses by legislators at such hearings which would give great provocation to any attorney? Such an assertion would amount to the rankest kind of statism, and is surely hostile to all our convictions. But if the State Bar is not to assume that the legislators in such hearings are always right insofar as the conduct of counsel before them is concerned, is this organization going to judge when the legislators overstep and counsel is duly

provoked? The truth is that the second recommendation fails to take into account the essentially political nature of legislative committee hearings and the way such proceedings are, in fact, used by some legislators.

The third recommendation, which in practical effect would deny members of the Bar the use of the constitutional right against self-incrimination, would invoke this organization in one of the most emotional controversies of our time—and on the side of the group assaulting this historic liberty. I fervently hope the Bar will stand unanimously in defense of such constitutional rights. We must not try to decide as a professional matter, what is largely still a bitterly political question. In such circumstances we would be doing ourselves and the general public a great dis-service by assuming the appearance of a conclusive professional judgment on the problem.

May I touch briefly on one other point? There are a few who say there is not really involved here any possible infringement of the constitutional right against self-incrimination or of full political freedom, because there would merely be a disbarment or suspension of those who violate the proposed interdictions, leaving the political freedom and constitutional rights of the disciplined unaffected. Isn't it obvious that the denial or suspension of a person's private calling, because of his political assertions, is the most effective possible way to strike at his political freedom? Such must not be allowed to happen to our profession through the precedent that would be established by the recommendations now before us.

In reaching your conclusions on these matters, I hope and trust the Board will be concerned with the underlying substance, not merely the legalisms involved. The three recommendations I submit, make bad law—but they make far worse policy, and it is on that basis that I have attempted to touch on some of the problems posed by the proposals.

Above all, I think it is important that we keep this hearing in its proper perspective. We are all agreed that we must firmly forward our struggle against Communism. History, however, demonstrates that it is the tactic of Communism, time after time, to divide those who oppose it—to set class against class and individual against individual. We must not let that happen to us. We need greater tolerance, greater understanding, greater perseverance to convert back to our ways any disbelievers. We need, as I stated at the beginning, continuing dedication to the efficacy of reason and our present professional and political freedoms.

Brothers-In-Law

By George Harnagel, Jr.



George Harnagel, Jr.

The Illinois State Bar Association announces a new service to its members. This is to be a Probate and Trust Newsletter devoted to legislation, recent decisions and news items of interest to probate and trust lawyers.

* * *

Lawyers seem to be doing all right in **Vancouver, B.C.** The bar association there has an Emergency Fund Committee which is charged with according financial assistance to practitioners in need. For its last fiscal year this Committee reported as follows:

Only one request for assistance by a needy practitioner was made on this fund during the year and the loan has been mostly refunded.

* * *

The **Iowa** State Bar Association is sponsoring a state tort claims act.

* * *

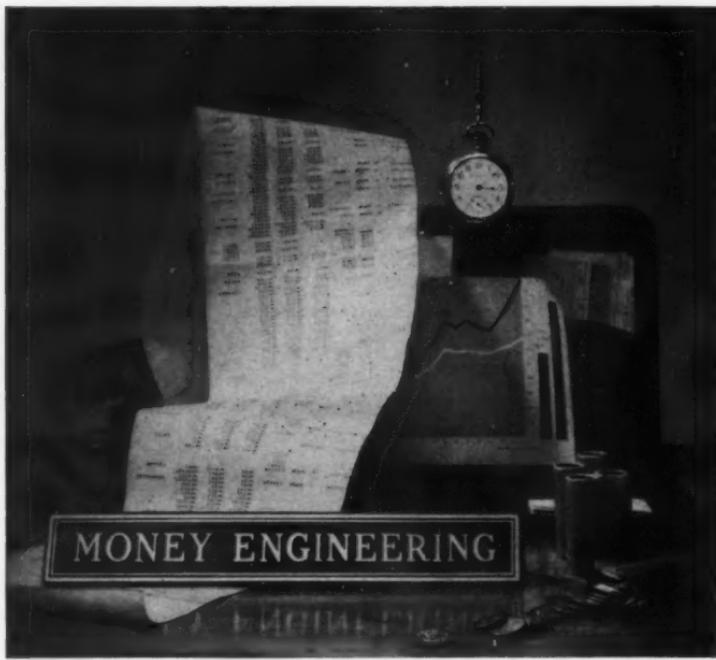
Jim (that seems to be his official first name) Lindsey was first elected to the **Texas** House of Representatives when he was a student at Baylor University where he got his law degree. Now, at the ripe old age of 28, he is serving as Speaker of the House, a post to which he was elected without any opposition.

* * *

The Ford Foundation has made grants totaling \$4,650,000 to four law schools to assist them in developing programs of international legal studies. The individual grants were \$2,050,000 to the Harvard Law School, \$1,500,000 to the Columbia Law School, \$500,000 to the Michigan Law School, and \$600,000 to the Stanford Law School.

* * *

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we continue practicing and learning more about it. It follows as surely as night follows the day that the more hours a lawyer works, the more he learns about how to be a good lawyer."—Timothy I. McKnight, president, Illinois State Bar Association.

* * *

The masculine traditions of legal associations are crumbling before the assaults of women lawyers. Since its organization in 1908, the **New York County** Lawyers' Association has admitted women to full membership, but it has stubbornly denied to them the distinction of being represented among the array of oil portraits hung in its headquarters, and which attest to outstanding service to the legal profession and the Association. The walls of tradition came tumbling down not long ago when an oil portrait of Ruth Lewinson, now serving her twentieth term as treasurer of the Association, was hung among the portraits of famous judges and lawyers who have helped make the Association the largest local bar association in the country and the world.

* * *

"FOR SALE: On account of poor health, will sell my library at almost give-away price. If buyer be a young lawyer locating here (we need another lawyer), he may pay as he makes it. I will visit office occasionally and help him get started.

"Eugene Lankford, Cisco, Texas."—Advertisement in *Texas Bar Journal*.

* * *

WHAT? NO DEMURRERS?

"A good feature which the Siamese courts have with regard to the filing of cases, is that before the Clerk can accept the case for issuance of a summons, the complaint must first be submitted to a judge for examination to ascertain whether it presents a *prima facie* case. Upon a judge reviewing the plaintiff's petition, which is usually done in a day or so, and the judge feeling the pleadings are properly drawn and set forth a *prima facie* case, he authorizes the Court Clerk to accept it and have summons issued in the usual course. That system does prevent the court from being cluttered up with cases involving faulty pleading, and irresponsible actions."—From an article on "The Judicial System of Thailand" by Albert Lyman, in *The Journal of the Bar Association of the District of Columbia*.



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The Los Angeles County Law Library Recent Acquisitions

EDITOR'S NOTE: Through the courtesy of Mr. Forrest S. Drummond, Librarian, and his excellent staff, the following selected list of recent acquisitions of the Los Angeles County Law Library is provided as a research and reference aid to attorneys, THE BULLETIN will regularly print such a list for the Bar's information.

Abbott, A. L. National electrical code handbook. 8th ed. 1954, 642 p.

American Fair Trade Council. A Fair trade manual for management. 1954, 77 p.

Austin, J. The Province of jurisprudence determined. 1954, 396 p.

Bell, R. W. Write what you mean. 1954, 116 p.

Belli, M. M. Modern trials, v. 3. 1954, 900 p.

Breeding, C. W. Taxation of oil and gas income. 1954, 340 p.

Clark, G. L. Equity. 1954, 555 p.

Colt, S. The trial of Samuel Colt (Colt v. Mass. Arms Co., 1851) 1953, 327 p.

Commerce Clearing House. Standard federal tax service, 1955. 6 v.

Craven, G. The gift tax. December, 1954, 106 p.

Crockett, J. P. The federal tax system of the United States; a survey of law and administration. 1955, 288 p.

Curtis, C. P. The modern prudent investor; How to invest trust funds. 1954, 130 p.

Fair, M. L. Port administration in the United States. 1954, 217 p.

Griswold, E. N. The fifth amendment today. 1955, 82 p.

Hanna, W. L. The Law of employee injuries and workmen's compensation, v. 2, Principles of substantive law. 1954, 704 p.

Harris, S. F. Criminal law (English) 1954, 708 p.

Indiana Bar Association. Indiana corporate procedures. 1954, 313 p.

Kemp, A. A. The quantum of damages in personal injury claims (English) 1954, 462 p.

Lasser, J. K. Business tax guide. 1955, 294 p.

Lorry, W. R. A Civil action, the trial. January, 1955, 181 p.

Maine. Revised Statutes, 1954. 5 v.

Osborn, P. G. A Concise law dictionary, 4th ed. (English) 1954, 399 p.

Page, W. H. Wills, 1954 Cumulative supplement to 1941 ed. 1136 p.

The Pennsylvania manual, 1953-54, 1158 p.

Papandreou, A. G. Competition and its regulation. 1954, 504 p.

The Practical lawyer, the magazine for the general practitioner, v. 1, no. 1, Jan. 1955.

Prentice-Hall. Federal taxes, 1955. 6 v.

Taft, P. The structure and government of labor unions. 1954, 311 p.

Thompson, E. B. Matthew Hale Carpenter, the Webster of the west. 1954, 335 p.

U. S. Naval War College. International law documents, 1952-53. 1954, 340 p.

Varcoe, F. P. The distribution of legislative power in Canada. 1954, 270 p.

Western Plumbing Officials. Uniform plumbing code. 3d ed. 1955, 165 p.

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Silver Memories

Compiled from the World Almanac and the L.A. Daily Journal of March, 1930, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

All surviving past presidents of the Los Angeles Bar Association attended the March monthly meeting. They were Judge **Albert M. Stephens**, '88-'89; Judge **Lucien Shaw**, '01-'02; William J. **Hunsaker**, '04; E. W. **Britt**, '12; **Jefferson P. Chandler**, '14; **Richard J. Dillon**, '15; **Oscar C. Mueller**, '17; **Edgar W. Camp**, '18; **Henry W. O'Melveny**, '19; **E. A. Meserve**, '20; **Frank James**, '21-22; **Oscar Lawler**, '23; **Robert M. Clarke**, '23; **John G. Mott**, '25; **Eugene Overton**, '26; **Kemper Campbell**, '17; **Hubert T. Morrow**, '28, and **Guy R. Crump**, '29.

* * *

William Howard Taft, recently resigned Chief Justice of the U. S. Supreme Court and 27th President of the U. S. (the only man to hold both offices), and Associate Justice **Edward Terry Sanford**, died within five hours of each other on March 8th. Being suggested as the latter's successor are Senator **George** of Georgia, Judge **John J. Parker** of the Federal Circuit Court, Senator **Borah** of Idaho, Judge **William S. Kenyon** of the Federal Circuit Court, and **John W. Davis**, Democratic presidential nominee of 1924 and prominent Wall Street lawyer.

* * *

George A. Cosgrave, Fresno attorney, has been named by President **Hoover** to the U. S. District Judgeship for the Southern District of California. The appointment was endorsed by Senator **Shortridge**. The Republican County Chairman had favored Judge **Edward J. Brittan** of Kern County. Judge Cosgrave was born near Angels Camp, and was ad-

mitted to the Bar in Fresno County in 1895. He succeeds Judge **Edward J. Henning** on the Federal Bench.

* * *

At Washington **George W. Wickersham**, Chairman of President Hoover's law-enforcement committee, in appearing before the Senate Judiciary Committee rejected 2½% beer as a panacea for prohibition discontent. He told the committee that his own Commission was not yet able to determine the predominant sentiment of the country on the prohibition laws.

* * *

Demonstrating the growth of the Bar in this area, **Parker, Stone & Baird**'s new 1930 Directory of Attorneys for Los Angeles and adjacent cities includes 4,000 names. The list contains 43 patent attorneys, 6 lawyers in Burbank, 28 in Glendale, 12 in Inglewood, 5 in Monrovia, 5 in North Hollywood, 91 in Pasadena, 11 in Pomona, 4 in San Fernando and 37 in Santa Monica.

* * *

Cardinal Eugenio Pacelli succeeded Cardinal Pietro Gasparri as Secretary of State to **Pope Pius XI**.

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OPINION No. 217
(December 16, 1953)

**CONFIDENCES OF A CLIENT—ADVERSE INFLUENCES AND
CONFLICTING INTERESTS**

A member of the profession has submitted the following factual situation:

Attorney practicing law in California was employed by X company, a carrier of liability insurance, from May, 1950 until August 15, 1953. From May, 1950 until February, 1951 Attorney was casualty insurance adjuster with said X company. From February, 1951 until August, 1953 Attorney was employed in legal department of said X company, defending the insureds of said X company in actions brought against said insureds. Occasionally Attorney was called upon to render legal opinions for the claims department of X company. Attorney conducted no private practice of law during the time he was employed by X company. In August of 1953 Attorney terminated his employment with X company. Upon leaving said employment Attorney was retained by X company to continue handling the defense of several cases he had been handling while he was previously employed by said X company. Attorney is now handling several of such cases and states that he will probably continue to handle some cases for the next several months. Attorney states that his compensation is on a regular fee basis for handling these matters and that these matters are in no way connected with the cause of action of A against X company in so far as the subject matter or parties are concerned.

In September, 1953 client A contacted Attorney relative to a cause of action against X insurance company. Client A knew of Attorney because Attorney had defended A for X company two years previously in a matter which is now closed and is in no way related to any other matters involved here. It appears to Attorney that A has a meritorious cause of action against X company for breach of contract. At the present time Attorney has decided to do nothing further with A's cause of action against X company until he obtains an opinion from this Committee. X company is not aware that A has approached Attorney. Attorney has set a tentative retainer fee and has received a check therefor from A, but has not cashed same.

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The circumstances of the origin of the alleged cause of action of A against X company are stated to be as follows:

A claim by a third party against A arose in January or February of 1952 and was made known to X company by April of 1952 at which time X company refused to extend coverage for said claim or to assume the defense of it. At that time Attorney was in the legal department of X company but was in no way connected with the handling of this matter and had no notice or knowledge of it at any time until September of 1953 after Attorney had left X company.

Attorney asks two questions:

(1) May Attorney represent A in any action A may bring against X company for breach of insurance contract due to alleged failure of X company to assume the defense in an action brought against A by a third party.

(2) If the answer to question No. 1 is in the negative, may the Attorney consult with another attorney of A's choice who would handle A's cause of action against X company.

Canon 6 of the Canons of Professional Ethics of the American Bar Association states as follows:

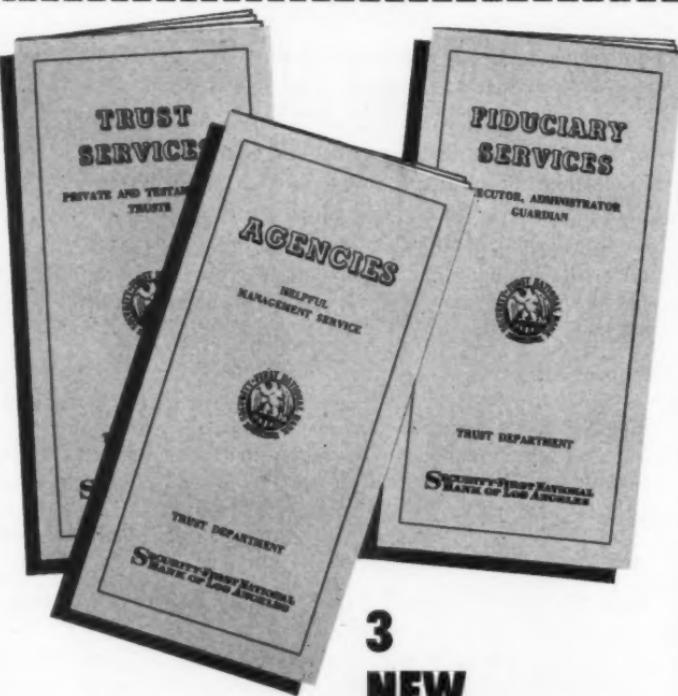
"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

The provisions of Canon 37 of the Canons of Professional Ethics of the American Bar Association which are pertinent to this question are as follows:

"It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment . . ." and the lawyer should not ". . . accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer . . ." ". . . or to the



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disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client."

Canon 29 of the Canons of Professional Ethics of the American Bar Association states in part:

An attorney "... should strive at all times to uphold the honor and to maintain the dignity of the profession . . ."

Rule 5 of the Rules of Professional Conduct of the State Bar of California is as follows:

"A member of the State Bar shall not accept employment adverse to a client or former client, without the consent of the client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client."

Rule 6 of the Rules of Professional Conduct of the State Bar of California is as follows:

"A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment."

Rule 7 of the Rules of Professional Conduct of the State Bar of California is as follows:

"A member of the State Bar shall not represent conflicting interests, except with the consent of all parties concerned."

In this situation, under the Rules cited above, a lawyer has a threefold duty:

- (1) To his client, former client, and prospective client;
- (2) To the public;
- (3) To the legal profession.

There are numerous opinions on the subjects of adverse and conflicting interests, and disclosure of confidential information in the files of the Legal Ethics Committee of the Los Angeles Bar Association and the Bar Associations of other prominent cities in the United States.

There are four tests for a lawyer to be guided by here:

- (1) Whether or not client X company ever made a disclosure of confidential information pertinent to A's case to Attorney during Attorney's employment by X company;

- (2) Whether or not Attorney *might have obtained* confidential knowledge pertinent to A's case while in the employment of X company;
- (3) Whether or not it would appear to the general public that Attorney, by accepting employment from A, would be engaging in unethical conduct;
- (4) Whether or not, prior to the employment of Attorney by A and after a full disclosure of the facts by Attorney to X company, X company consents to the employment of Attorney by A. In this particular, the first client's wishes should be given great weight.

The Committee is of the opinion that the two questions should be answered in the negative if Attorney, in the exercise of honest judgment, concludes that, in the performance of his threefold duties under the rules cited above, either test number 3 or 4 would not be met.

This Opinion, like all Opinions of this Committee, is advisory only. (By-Laws, Art. X, Sec. 3)

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